IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13151 of 2003
And
CIVIL APPLICATIONS No. 4999 & 6353 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHUNILAL D PATEL

Versus

TRANSPEK SILOX INDUSTRY LTD.

Appearance:
1. Special Civil Application No. 13151 of 2003
Petitioner :: In PERSON
MR KM THAKAR for M/s. TRIVEDI & GUPTA for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 28/09/2004

ORAL JUDGEMENT

Heard the petitioner who has appeared in person

and the learned advocate Mr. Thakar.

The petitioner has challenged the order dated 1st July, 2003 passed by the Labour Court, Vadodara below Application Exh.99 in Reference [LCV] No.1262 of 2001.

The respondent before this Court is a Public Limited Company engaged in manufacturing inorganic chemicals [hereinafter referred to as, "the Company"]. By order dated 14th May, 1998, the petitioner was employed by the Company as Executive Materials Management on terms and conditions mentioned therein. The petitioner's service came to be terminated by order dated 1st May, 2001 for loss of confidence. Feeling aggrieved, the petitioner raised industrial dispute. The said dispute has been referred to the Labour Court, Vadodara and has been registered as Reference [LCV] No.1262 of 2001.

In the said reference, the Company raised a preliminary objection as to the jurisdiction of the Labour Court. It was urged that the petitioner was not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 [hereinafter referred to as, "the Act"]. The Labour Court, therefore, had no jurisdiction to entertain, hear and decide the dispute raised by the workman. The said objection has been decided by the Labour Court as preliminary issue. By impugned order dated 1st July, 2003, the Labour Court has held that the petitioner is not a workman within the meaning of section 2 (s) of the Act. Feeling aggrieved, the petitioner has preferred the present petition.

The petitioner has extensively read-over the oral and documentary evidence led before the Labour Court. In the submission of the petitioner, at the relevant time, the petitioner was posted in the Stores Department of the Company. The petitioner used to sit alongwith other workmen. He used to share table with the other workmen. The petitioner was required to report to the Stores Incharge. The petitioner was required to issue Gate-pass for empty vehicles, prepare Bin Card, maintain register of the stock, etc. The nature of duties performed by the petitioner was essentially clerical. The petitioner was, therefore, a workman within the meaning of section 2 (s) of the Act and was entitled to the protection available to a workman.

The petitioner has laid emphasis on the fact that the petitioner was not empowered to deal with

subordinates i.e., he had no power to appoint, or transfer, or take disciplinary action against such staff or to sanction leave, etc.

Learned advocate Mr. Thakar has also extensively read over the evidence. He has submitted that the petitioner possesses a degree in Engineering [Chemicals]. In past, he had served in a responsible position in IPCL and in one another Company viz., Camstar Company Ltd. The petitioner was appointed by the Company as Executive Materials Management. Initially he was posted in the Materials Department but later he was transferred to Stores Department. In his capacity as an Executive, the petitioner was a middle level managerial staff. He was answerable to his superiors viz., Deputy Manager, Manager, etc. Whereas, below him were the officers, assistants, workers, etc. In the submission of Mr. Thakar, being an executive, the petitioner was performing functions which were supervisory in nature. The Labour Court has considered the evidence on record and the rival contentions. The Labour Court has recorded finding that the functions performed by the petitioner were essentially supervisory in nature. The petitioner, therefore, cannot be said to be a workman within the meaning of Section 2 (s) of the Act. This Court, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, shall not reappreciate the evidence and to record its own finding to substitute the findings recorded by the Labour Court.

The petitioner and learned advocate Mr. Thakar have buttressed their arguments by plethora of judgments. The principles laid down in the said judgments have been followed.

Reliance is placed on the definition of word, "Workman" as it occurs in Section 2 (s) of the Act, particularly exception (iv) to the said definition. Under the said clause (iv), "a person, who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature" has been excluded from definition of the workman. It is not disputed that the petitioner drew wages exceeding Rs. 1,600/= per month. The question is whether the functions performed by the petitioner can be said to be supervisory in nature. It is well-settled that it is the general nature of duties performed by the person which should determine the status of the employee i.e. whether he can be said to be a

workman or not. For determining the status of an employee, each task or each duty performed by the person is not required to be considered individually in isolation of one another. Considering the overall effect of several functions performed by the petitioner, the Labour Court has held that the functions performed by the petitioner were mainly of supervisory nature. The petitioner would, therefore, be excluded from the definition of 'Workman' under the aforesaid exclusion Clause (iv).

While exercising its supervisory jurisdiction under Article 227 of the Constitution of India, this Court shall not reappreciate the evidence on record, upset the finding recorded by the Labour Court and record its own finding. The Labour Court having considered the claim made by the petitioner in its entirety, no interference is warranted.

The petition is dismissed. Rule is discharged. There shall be no order as to cost. Civil Applications stand disposed of.

{Miss R.M Doshit, J.}

Prakash*